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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/173,134	10/15/1998	GEORGE S. GABRIEL	364106/176	1325

7590 11/01/2006  
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NEW YORK, NY 10038

EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/173,134

Applicant(s)

GABRIEL ET AL.

Examiner

Son T. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN  
PRIMARY EXAMINER

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-3,8-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The functional language of the feeder assembly "constructed and arranged to adjust the height at which food and/or fluids is available to an animal" is unclear because it does not appear that the feeder assembly is height adjustable within the cage bottom. As understood, the container walls or supports 52,52' snap onto food holder 37 to hold the food in the cage bottom. A user has to use holder 37 because if not, the food will fall through the container walls or supports, thus, there is nothing there to adjust the height. Once the holder 37 is snapped onto the walls or supports 52,52', a user cannot adjust the height. There is no mechanism or component to move the feeder assembly up and down to provide adjustability of height at which food or fluid is available.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-3,8-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how height adjustability at which food and/or fluids is available as mentioned in the 112 1<sup>st</sup> paragraph rejection above.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claim 11** is rejected under 35 U.S.C. 102(b) as being anticipated by Sheaffer et al. (US 4,989,545 on form PTO-1449).

Sheaffer et al. teach cage assembly for housing a plurality of sizes of animals, the cage assembly comprising: a feeder assembly 32,33; and a cage bottom 22 for housing an animal, the cage bottom being constructed and arranged to receive feeder assemblies of different heights (since the cage bottom is of a certain height, the cage bottom is capable of receiving different height feeder assemblies within the height of the cage bottom itself); the cage bottom and feeder assembly working together to provide food and water to animals of different sizes.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1,2,10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheaffer et al. (US 4,989,545 on form PTO-1449) in view of applicants' admitted prior art (herein AAPA).

For claim 1, Sheaffer et al. disclose a multipurpose cage level barrier rodent cage for housing multiple species of rodents, including mice or rats in a ventilated rack and cage system (as mentioned in applicants' specification on page 1) comprising a cage bottom 22 having a plurality of integral side walls 50, a floor 22 and an open top end closed off by a filter bonnet 24. In addition, Sheaffer et al.'s rack for supporting the cages comprises a ventilating system for directly providing air ventilation to and continuously removing exhaust air from the cages supported by the rack (col. 4, lines 25-39 and col. 5, lines 12-56). In addition, Sheaffer et al. also teach a feeder assembly 32,33 at which fluid is available to the animal housed in the cage bottom. Sheaffer et al. are silent about the floor having a length  $l$  and a width  $w$  wherein  $80 \text{ in}^2 \leq l \times w \leq 110 \text{ in}^2$ .

AAPA submits on page 1 of the specification that one of ordinary skill in the art would recognize the floor area of a cage for laboratory animals to be a parameter that may be varied depending on, among other things, the type and number of animals intended to be housed in order to provide the animals with a hygienic and humane environment. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the floor of the cage of Sheaffer with the dimension range as listed above, since it has been held that where routine testing and

general experimental conditions are present, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 2, again, on page 1 of the specification, AAPA submits that "ILAR guidelines set non-binding minimums for size and dimension of cages for rodents. For mice weighing more than 25 grams, a cage having a floor dimension of at least 15 square inches per mouse is required. Rats up to 400 grams in size require a cage having floor dimensions of at least 40 square inches per rat. Similar requirements are mandated for hamsters and guinea pigs by the AWA". Based on this evidence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to determine a set of dimensions for the floor area of Sheaffer's cage that would result in a floor area of 80 square inches in order to provide a cage having a floor area sufficient to accommodate two rats weighing up to 400 grams each to meet ILAR guidelines and the AWA as discussed by AAPA.

For claim 10, Sheaffer et al. as modified by AAPA (emphasis on Sheaffer et al.) further teach the feeder assembly comprises one or more selectively attachable components 35 for adjusting the height of the feeder. The user would use flanges 35 to lift the feeder assembly in or out of the cage bottom, thus, adjust the height of the feeder.

9. **Claims 3,8,9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheaffer et al. (US 4,989,545 on form PTO-1449) in view of Coiro et al. (US 5,894,816 on form PTO-1449).

For claim 3, in addition to the above, fig. 4 and col. 8, lines 57-64 of Sheaffer et al. disclose a double sided rack having a depth. However, Sheaffer are silent about the length of the cage being less than substantially 18 inches. Coiro et al. disclose a cage level barrier cage comprising a cage bottom having an inner length 17 at the receptacle rim of about 11.4 inches (col. 5, lines 57-59) and an outer length L6 at rim of the receptacle of 11.75 inches (col. 4, lines 57-58). Based on this, the length of Coiro et al.'s cage is consider to be less than substantially 18 inches. It follows that the length of Coiro et al.'s cage is also "less than substantially 36 inches" as claimed by applicant in claim 6. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a cage level barrier cage as taught by Coiro et al. in Sheaffer's double sided ventilated rack in order to provide a ventilated cage and rack system comprising cages having a usable floor space of 75 square inches, as taught by Coiro in col. 5, lines 60-63, to thereby accommodate up to five mice weighing 25 grams each, while retaining compatibility with existing wire bar lids and microbarrier tops as taught by Coiro in col. 3, lines 17-19.

For claim 8, please see the above paragraphs.

For claim 9, Sheaffer et al. as modified by Coiro et al. disclose the above features except a portion of the cage, when resting within the rack, extends beyond the rack. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a portion of the cage of Sheaffer et al. as modified by Coiro et al., when resting within the rack, extends beyond the rack depending on a chosen length one wishes to have (as long as it meets ILAR guidelines) because one of

ordinary skill in the art would recognize the floor area of a cage for laboratory animals to be a parameter that may be varied depending on, among other things, the type and number of animals intended to be housed in order to provide the animals with a hygienic and humane environment.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. **Claims 1-3,8-19** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1-3,6-8,24,25** of U.S. Patent No.

**6341581**. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3,8-19 of the present invention claim the same subject matter as claims 1-3,6-8,24,25 of US6341581. For example, both the present invention and US6341581 claim a cage bottom having a plurality of integral side



walls, a floor and an open top; the cage bottom area of approximately 80 square inches; a feeder assembly having a frame, at least one support having an open lower end having a tab, a pair of flanges, and a snap on bottom having an upper lip and channel and an opening therein and forming a flush surface, the upper lip having a recess; the snap on bottom is a food container or a water bottle support.

12. **Claims 1-3,8-19** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1,8-12** of U.S. Patent No.

**6336427**. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3,8-19 of the present invention claim the same subject matter as claims 1,8-12 of US6336427. For example, both the present invention and US6336 claim a cage bottom having a plurality of integral side walls, a floor and an open top; a feeder assembly having a frame, at least one support having an open lower end having a tab, a pair of flanges, and a snap on bottom having an upper lip and channel and an opening therein and forming a flush surface, the upper lip having a recess; the snap on bottom is a food container or a water bottle support.

13. **Claims 1-3,8-19** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1,3,8-12,30** of U.S. Patent No.

**6041741**. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3,8-19 of the present invention claim the same subject matter as claims 1-3,6-8,24,25 of US6041741. For example, both the present invention and US6041741 claim a cage bottom having a plurality of integral side walls, a floor and an open top; the cage bottom area of approximately 80 square inches;

a feeder assembly having a frame, at least one support having an open lower end having a tab, a pair of flanges, and a snap on bottom having an upper lip and channel and an opening therein and forming a flush surface, the upper lip having a recess; the snap on bottom is a food container or a water bottle support.

***Response to Arguments***

14. Applicant's arguments filed 9/29/06 have been fully considered but they are not persuasive.

**Applicant argued that Shaeffer et al. do not teach a feeder assembly constructed and arranged to adjust the height at which food and/or fluids is available to an animal contained in the cage bottom.**

Shaeffer et al. do teach a feeder assembly 32,33 that can be adjusted by a user by lifting flange 35, hence, adjust the height of the food therein. In addition, as discussed in the above, Applicant did not explain in the specification how height adjustment of the feeder assembly is to exist. By piecing components together, i.e. the container wall or support 52 and the snap on bottom 37, is not considered height adjustment.

All other arguments have been addressed in either the Final Rejection or the Examiner's Answer.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Son T Nguyen  
Primary Examiner  
AU 3643